

Third United Nations Conference on the Law of the Sea

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91st Plenary meeting

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decision, however much that solution might be open to criticism both in principle and in law. His delegation would not impede the implementation of that decision, since its main concern was that the Conference should proceed with its task with all speed. It was ready to offer full support in preparing a universal treaty on the law of the sea.

138. Mr. ARIAS SCHREIBER (Peru) said his Government considered that the presence, as an officer of the Conference, of a person who did not represent any State and therefore had no right to participate in the Conference, was illegal, and the decision taken by less than half the delegations participating in the Conference, in contradiction of the rules of procedure, in no way altered the situation.

139. That decision had legal, administrative and financial implications which would have to be assessed.

140. From the legal point of view, it would have to be decided whether it was now accepted that a private individual who did not represent any State could participate and hold high office in a plenipotentiary conference.

141. On the administrative level, he would like to know what steps the Secretary-General had taken to enable the person at present holding the position of President to carry out his functions, whether a contract had been signed, and if so on whose initiative and for how long; he would also like to know whether the person in question came administratively under the Secretary-General and whether he was responsible to the Secretary-General.

142. He would also like to know the financial implications of the decision for the States Members of the United Nations. He requested the Special Representative of the Secretary-General to provide full information on those points and he

reserved the right to speak again if the replies called for comment.

143. Mr. ZULETA (Special Representative of the Secretary-General) replied that, as far as the legal implications of the appointment of the President and the possibility of setting a precedent were concerned, it was not for the Secretariat to predict how the Conference's decision might be interpreted in the future by other United Nations bodies.

144. Regarding the administrative implications, he said that the secretariat had not taken any steps to enable the President to carry on his functions, since the Conference had not so requested, and the secretariat could not act without precise instructions from the Conference. However, arrangements had been made, in agreement with the Secretary-General, to enable the secretariat to consult Mr. Amerasinghe, pending a solution of the problems concerning the presidency.

145. Lastly, the financial implications of the decision taken by the Conference would depend on what instructions the latter might give to the Secretary-General to enable the President to carry out his functions. The secretariat could not take any steps without a decision by the Conference.

146. Mr. TUERK (Austria), speaking on a point of order, moved the adjournment of the meeting.

147. Mr. VELLA (Malta) opposed the motion.

148. The PRESIDENT, citing rule 30 of the rules of procedure, invited the Conference to decide immediately on the motion of the representative of Austria.

The motion for adjournment was adopted.

The meeting rose at 9.45 p.m.

91st meeting

Thursday, 13 April 1978, at 10.55 a.m.

President: Mr. M. YUNUS (Pakistan).

Question of the presidency of the Conference (concluded)

1. Mr. EVENSEN (Norway) observed that certain financial matters had to be discussed, and proposed that they be discussed in closed meeting.

2. Mr. ARIAS SCHREIBER (Peru) requested that a summary record should be made of the closed meeting.

It was agreed that the matters referred to by the Norwegian representative should be discussed in closed meeting, and that a summary record should be made of the discussion.¹

The public meeting was suspended at 11 a.m. and resumed at 12.30 p.m.

Mr. H. S. Amerasinghe took the Chair.

Consideration of the subject-matter referred to in paragraph 3 of General Assembly resolution 3067 (XXVIII) of 16 November 1973

3. Mr. ARIAS SCHREIBER (Peru) said that he had pleasure in introducing the Peruvian proposal on the establish-

ment of an international commission on the law of the sea (A/CONF.62/L.22). The idea of establishing a permanent institution to deal with the problems that might arise from the application of the provisions of the convention, or from situations not provided for in the convention, had existed from the beginning of the Conference, but had not received appropriate attention at earlier sessions. The time had come to make good that omission.

4. As Mr. Zuleta, Special Representative of the Secretary-General, had stated at the last session of the Asian-African Legal Consultative Committee in January 1978 it was necessary to look to the future and establish an institutional framework that would ensure the consistent and uniform application of the provisions of the convention and would help to deal with any situations that might arise in relation to the progressive development of the law of the sea.

5. In the same statement Mr. Zuleta had recalled that the Secretary-General had expressed the view at Caracas in 1974 that the Conference might consider the establishment of certain institutional machinery, such as a periodic meeting of the States parties to the convention, to consider problems arising either from the actual provisions of the convention or from new uses of the sea. He had also recalled that the delegations of Sri Lanka, Portugal and Suriname had made similar suggestions—during the discussion on the settlement of dis-

¹The summary record of the second part (closed) of the meeting appears as document A/CONF.62/SR.91/Add.1, the distribution of which was restricted.

putes at the 59th, 60th and 63rd plenary meetings²—to the effect that a meeting or conference of the States parties to the convention might undertake periodic reviews of the provisions of the convention in order to avoid further disputes and resolve any political problems that might arise, and also to consider new ideas concerning activities that might not have been provided for in the necessary detail in the provisions of the convention.

6. The proposal by the Peruvian delegation was therefore only a first systematic attempt to express in the form of draft articles the earlier suggestions to which he had referred.

7. Article 1 provided that an international commission on the law of the sea should be established for the purposes already indicated, and that all States parties to the convention would *ipso facto* be members of the commission, whose seat would be at a place to be determined.

8. Article 2 listed the powers and functions which the commission would have, and which could be expanded when its statutes were being prepared and adopted. The list was therefore not exhaustive, but it made provision, *inter alia*, for the powers and functions mentioned in subparagraphs (a) to (k), whose content was self-explanatory. It should perhaps be stressed that the commission would be a forum which would not interfere with the functions of other organs provided for in the convention, would not intervene in questions that were dealt with in accordance with the procedures for the settlement of disputes and would not interfere with the machinery established for the amendment or review of the convention. On the contrary, it would co-operate in ensuring that those functions were duly performed and that those questions were appropriately dealt with.

9. Article 3 provided that the Secretary-General should convene, not later than one year after the convention had been signed, a conference of the States parties to prepare and adopt the statutes of the international commission on the law of the sea, and that he should convene the first conference of the commission not later than three years after the entry into force of the convention. That would give sufficient time to ensure that the commission could prepare its work and present its recommendations to the Conference when the latter met in accordance with an agenda which was to be established at the appropriate time.

10. He hoped that his proposal would be considered by the plenary and, if necessary, by the working group on the preamble and final clauses.

11. The PRESIDENT said that the Peruvian proposal would be placed before the plenary at the appropriate time.

Organization of work

12. The PRESIDENT said that the recommendations of the General Committee on the organization of work of the seventh session, which had been adopted on the previous day, would now be issued in final form in document A/CONF.62/62. In connexion with the time-table in recommendation 12, he said that the provision in subparagraph (d) required the Conference to take a formal decision that the present session should continue until 19 May.

It was so decided.

13. The PRESIDENT asked whether it was agreed that at least two negotiating groups should meet immediately: one to deal with item (1) in recommendation 5 and the other to deal with item (4) in recommendation 5. The members and chair-

men of the two groups would be determined after consultation with all delegations concerned.

It was so decided.

14. The PRESIDENT said that he would like to consult with the chairmen of the two negotiating groups and the chairmen of the regional groups as soon as possible.

15. Mr. MAÏGA (Mali) said that the African group was ready to consult with the other groups.

16. Mr. VELLA (Malta) said that, on the previous day, his delegation had opposed the motion to adjourn the meeting because it had been announced that there were only three more speakers, who could be heard in 10 minutes, and he had felt that the meeting might continue for that short time. There could, of course, have been other reasons for the motion of which he had been unaware.

17. The Chairman of the First Committee had made a statement at the 90th plenary meeting on a matter of vital interest to his Government, and his delegation reserved the right to reply to that statement at a future meeting when it had seen the relevant summary record. For the moment, he wished merely to assure the Chairman of the First Committee that he felt no bitterness regarding the matter, and that the delegation of Malta looked forward to working closely with Mr. Engo and would give him its full co-operation.

18. Mr. WITEK (Poland), referring to certain observations that his delegation had made during the discussions in the General Committee on the work of the Third Committee, said that those observations did not affect his delegation's position with regard to problems of pollution, concerning which his Government had expressed its deep concern. His Government had also expressed its understanding of certain measures taken by the Government of France with the aim of preventing tragic ecological catastrophes such as that which had occurred a few weeks previously on the French coast. It hoped merely that measures relating to pollution would not interfere with normal international navigation; and, on that understanding, it would be glad, as previously, to co-operate with all delegations interested in the matter.

19. Mr. DE LACHARRIÈRE (France) said he wished to express his official thanks to the Polish Government for the understanding it had shown of France's concern with the fight against pollution and of the measures that the French Government had taken in that connexion.

20. Mr. IBÁÑEZ (Spain) recalled that, in recommendation 1, it was stated that the seventh session should give priority to the identification and resolution of the outstanding core issues and should also discuss and resolve all other issues which remained outstanding; and it had been explained that the list of hard-core issues in recommendation 6 was not exhaustive. In recommendation 6, it was further stated that other issues could be considered in accordance with recommendation 2.

21. The Spanish delegation accordingly requested that consideration be given to two further issues, namely, straits used for international navigation, and archipelagos of States, a topic which might be considered in conjunction with the régime of islands. His delegation hoped that the relevant committee would take steps to establish a negotiating group to consider those issues.

22. Mr. YOLGA (Turkey) wondered whether the representative of Spain wished to refer rather to the idea of "archipelagic States" when he spoke of "archipelagos of States". If it was not a question of confusion in the terminology, it would be well to note that the idea of archipelagos of States had not been discussed previously and that no mention whatsoever had been made of it in the informal com-

²Official Records of the Third United Nations Conference on the Law of the Sea, vol. V (United Nations publication, Sales No. E.76.V.8).

posite negotiating text.³ The delegation of Turkey believed, in any case, that it would not be convenient to propose new subjects for discussion at that late stage in the work of the Conference.

23. Mr. IBÁÑEZ (Spain) said that in using the term "archipelagos of states" he was referring to the long-standing issue of archipelagos that formed part of a State and which deserved to be taken into consideration.

Addition to the list of non-governmental organizations

24. Mr. HALL (Executive Secretary of the Conference) said he had received requests from three non-governmental

organizations in consultative status with the Economic and Social Council to be invited to attend the Conference as observers. The Organizations concerned were the Arab Lawyers Union, International Co-operation for Socio-Economic Development, and the World Young Women's Christian Association.

25. The PRESIDENT said that, if there were no objections, the three organizations would be invited to attend the Conference as observers.

It was so decided.

³*Ibid.*, vol. VIII (United Nations publication, Sales No. E.78.V.4).

The meeting rose at 1.10 p.m.

92nd meeting

Tuesday, 18 April 1978, at 11.30 a.m.

President: Mr. H. S. AMERASINGHE.

Organization of work

1. The PRESIDENT announced that, following consultations between himself and the Chairmen of the First and Second Committees, the Chairmen of the African group, the Asian group, the Arab group, the Latin American group, the Eastern European group and the group of Western European and Other States, the Chairman of the group of Coastal States, the Chairman of the group of Land-locked and Geographically Disadvantaged States and the representative of the United States of America, agreement had been reached on the final composition of the nuclei of the negotiating groups on items (1), (4), (5) and (7) of recommendation 5 in document A/CONF.62/62.

2. The nucleus of the negotiating group on item (1) would be as set out in his note to the group chairmen and the representative he had mentioned, with the addition of the Dominican Republic and Venezuela. That change had been accepted on the understanding that it should not serve as a precedent for abandoning the general principle of equitable geographical distribution within negotiating groups. The Chairman of the group would be Mr. Njenga (Kenya).

3. The nucleus of the negotiating group on item (4) would be as announced in his note of 17 April 1978 to the group chairmen and the representative he had mentioned, with the exception of the replacement of the delegation of Nepal by that of Bolivia as a representative of the group of land-locked and geographically disadvantaged States. He was grateful to the representative of Nepal for the spirit of compromise he had demonstrated in agreeing to withdraw in favour of the representative of Bolivia. The Chairman of the negotiating group would be Mr. Nandan (Fiji).

4. The nucleus of the negotiating group on item (5) would comprise: Algeria, Angola, Egypt, Lesotho, Liberia, Madagascar, Nigeria, Swaziland and Zambia for the African States; China, Fiji, India, Indonesia, Iran, Oman, Pakistan and Singapore for the Asian States; Argentina, Chile, Colombia, Ecuador, Guyana, Jamaica and Mexico for the Latin American States; Australia, Canada, Denmark, Germany, Federal Republic of, Iceland, Norway and Switzerland for the Western European and other States; Bulgaria, Hungary, the USSR and Yugoslavia for the Eastern European States; and the United States of America. It had initially been intended that the group should be a tripartite body, with seven

representatives each from the group of land-locked and geographically disadvantaged States and the group of Coastal States and six representatives from other States, but it had subsequently been decided that that arrangement would be inappropriate in view of the issue the group was to discuss. The main criterion which had finally been applied in selecting the nucleus of the group had been that of equitable geographical distribution, subject to which the various regional and other groups had sought—successfully—to ensure that all points of view were represented. The Chairman of the group would be Mr. Stavropoulos (Greece).

5. All those who had been involved in the negotiations had agreed that the subject matter of item (7) was principally of interest to pairs of States and it had therefore been decided that no nucleus should be announced for the relevant negotiating group. Consequently, all States would be welcome to attend the first meeting of that group, which would be chaired by Mr. Manner (Finland).

6. At the suggestion of the Chairman of the Second Committee, it had been agreed that the chairmen of the negotiating groups on items (4), (5) and (7) would consult him in order to prevent conflicts between the schedules of those groups and of the Committee, and thus avoid the problems which such conflicts would entail for small delegations.

7. In his note addressed to participants in the Conference on 17 April 1978, he had drawn attention to the contents of recommendation 3 in document A/CONF.62/62, concerning the open-ended nature of negotiating groups, and had stated that "It may be noted that delegations are free to choose who should represent them at any time in any negotiating group". In order to dispel the confusion which the latter statement had apparently caused, he wished to make it clear that, in accordance with established practice and the sovereign right of States, a participating State could be represented in any negotiating group by any member of its delegation and could replace its representative in a group by any other member of its delegation at any time during the group's existence.

8. He hoped that all the groups would start their work with the utmost expedition and that, rather than merely repeating set positions, the participants in the groups would engage in genuine negotiations.

9. Mr. TUEBK (Austria), speaking on behalf of the group of land-locked and geographically disadvantaged States,